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NEWS RELEASE

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For Release:
March 25, 2003

Comment Wanted on Proposed Amendment to Hawai'i Rules of Appellate Procedure

The Supreme Court of Hawai'i seeks public and bar comment on the American Judicature Society's proposal to amend Rule 35 of the Hawai'i Rules of Appellate Procedure that allow citation to unpublished appellate court decisions for their persuasive value. The Standing Committee on the Hawai'i Rules of Appellate Procedure (HRAP) considered the proposed rule. The committee concluded that the proposed rule is impractical and unneeded and recommended that it not be considered further.

The AJS proposal to amend HRAP 35 is as follows (additions are underlined, deletions are bracketed):

RULE 35. DISPOSITIONS

- (a) **Classes of Dispositions.** Dispositions may be rendered by a designated judge or justice and may take the form of published, per curiam, or memorandum opinions or dispositional orders.
- (b) **Publication.** Memorandum opinions shall not be published. Dispositional orders shall not be published except upon the order of the appellate court.
- (c) **Application for Publication.** Any party or other interested person may apply for good cause shown to the court for publication of an unpublished opinion.
- (d) **Citation.** A memorandum opinion or unpublished dispositional order shall not be considered nor shall be cited in any other action or proceeding as controlling authority, except when the opinion or unpublished dispositional order establishes the law of the pending case, res judicata or collateral estoppel, or in a criminal action or proceeding involving the same respondent.

In all other situations, a memorandum opinion or unpublished dispositional order may be cited in any other action or proceeding if the opinion or order has persuasive value. A party who cites a memorandum opinion or unpublished dispositional order shall attach a copy of the opinion or order to the document in which it is cited, as an appendix, and shall indicate any subsequent disposition of the opinion or order by the appellate courts known after diligent search. If an unpublished decision is cited at oral argument, the citing party shall provide a copy to the court and the other parties. When citing an unpublished opinion or order, a party must indicate the opinion's status.

- [(d)] (e) **Mailing by Appellate Clerk.** The appellate clerk shall promptly mail or telefax all parties a copy of the opinion or dispositional order.
- [(e)] (f) **Terminology.** When used in an opinion or dispositional order, the word "reverse" ends litigation on the merits, and the phrase "vacate and remand" indicates the litigation continues

in the court or agency in accordance with the appellate court's instruction.

Contact the Judiciary Public Affairs Office at (808) 539-4909 for a copy of the Hawai'i Chapter of American Judicature Society's [report of AJS special committee on unpublished judicial opinions](#) (140 KB PDF file) and the [HRAP memorandum](#) (90 KB PDF file) expressing opposition to the proposal. The reports can also be read and downloaded from the Judiciary website at www.courts.state.hi.us/.

Comments about the proposed amendment should be submitted in writing no later than December 29, 2003 to the Judiciary Public Affairs Office, 417 South King Street, Honolulu, Hawai'i 96813; by facsimile at (808) 539-4801; or via the Judiciary website.

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Note: The AJS special committee report is 22 pages long and the HRAP committee report is five pages long. Please contact the Judiciary Public Affairs Office at (808) 539-4909 for a copy of the reports. The reports can also be read or downloaded from the Judiciary website.